

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

MATT O'DEA,

Charging Party,

-v-

BURLINGTON NORTHERN
SANTA FE,

Respondent.

Case No.: 0051011210

ORDER

Matt O'Dea (O'Dea) filed a complaint of discrimination against Burlington Northern Santa Fe (BNSF) with the Department of Labor and Industry. The Hearings Bureau (Bureau) held a contested case hearing pursuant to § 49-2-505, MCA. Following the hearing, the Bureau issued a decision that determined BNSF discriminated against O'Dea based on a perceived disability of morbid obesity when it did not hire him. The Bureau also awarded back pay, front pay, and emotional distress damages. BNSF filed an appeal with the Montana Human Rights Commission (Commission) and O'Dea filed a cross appeal. The Commission considered the matter on September 18, 2007. Michelle Friend appeared and argued on behalf of BNSF. Terry Trieweiler appeared and argued on behalf of O'Dea.

BNSF argued the hearing officer erred in concluding that it perceived O'Dea to be disabled and erred in concluding that it considered O'Dea unable to perform a broad class of jobs. It also argued the front pay award and the emotional distress award were clearly erroneous. BNSF asserted these damage awards were too high because they were speculative and punitive.

O'Dea argued the hearing officer was correct in the determination of liability, back pay and emotional distress. However, in his cross appeal, O'Dea argued that the hearing officer's determination of front pay was clearly erroneous because it was not based on substantial evidence in the record. He argued that the hearing officer improperly considered the four year limitation on front pay damages in the Wrongful Discharge from Employment Act and did not rely on the uncontradicted evidence in the record of O'Dea's front pay damages.

After considering the written and oral arguments of the parties and the record in the case, the Commission vote split two to two on affirming the agency decision as to liability, back pay and emotional distress and reversing and modifying the front pay damages award by increasing the amount based on the record. While the discussion indicated a majority of the members agreed with the determination on liability, back pay, and emotional distress, a majority of the members did not agree on the issue of front pay. Pursuant to § 2-15-124(8), MCA, although a majority of the membership of the Commission constitutes a quorum to do business, a favorable vote of at least a majority of the members is required to adopt a decision. In this matter, the Commission was unable to reach a majority vote. Therefore, the prior-level decision of the Bureau stands and is **affirmed** in its entirety.

A person who has exhausted all administrative remedies available within an agency and who is aggrieved by a final agency decision in a contested case is entitled to file a petition for judicial review within 30 days after service of the final agency decision. Mont. Code Ann. § 2-4-702. The petition must be filed in the district where the petitioner resides or has the petitioner's principal place of business, or where the agency maintains its principal office.

DATED this ____ day of September, 2007.

Acting Chair Allen Secher
Human Rights Commission

CERTIFICATE OF SERVICE

The undersigned employee of the Human Rights Bureau certifies that a true copy of the forgoing Human Rights Commission ORDER was served on the following persons by U.S. mail, postage prepaid, on September ____, 2007.

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